



GAHC010112542023

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

Case No. : CRP/56/2023

DHIRAJ CHOUDHURY AND 8 ORS
S/OLATE DEBENDRA NATH CHOUDHURY, R/O BARPETA DADHIN HATI,
P.O. AND P.S.-BARPETA, DIST-BARPETA, ASSAM

2: MD. MOZZAMMEL HOQUE
S/O LATE HABIBUR RAHMAN
R/O BARPETA ROAD TOWN
NEAR BARPETA ROAD RAILWAY STATION
P.O. AND P.S.-BARPETA
ASSAM
PIN-781315

3: HASMAT ALI
S/O LATE MATAB ALI
R/O BARPETA ROAD TOWN
ALAMIN NAGAR
P.O. AND P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-781315

4: MONOWARA KHATUN
W/O AKHIRI ZAMAN
D/O LATE MATAB ALI
R/O VILL- BADE
P.O.-MUNAKUSHA
P.S.-PANBARI
DIST- CHIRANG
ASSAM
PIN-783391

5: MOMENA KHATUN
W/O MAINUL HOQUE
D/O LATE MATAB ALI



R/O BARPETA ROAD TOWN
ALAMIN NAGAR
P.O. AND P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-781315

6: MAMTAZ BEGUM
W/O DEWAN SHAFIKUL ISLAM
D/O LATE MATAB ALI
R/O MANDIA
P.S.-BAGBAR
DIST- BARPETA
ASSAM
PIN-781308

7: JULEKHA KHATUN
W/O BAHARUL ISLAM
D/O LATE MATAB ALI
R/O VILL- SALABILA NO. 2
P.O.-SALABILA BAZAR
P.S.-MANIKPUR
DIST- BONGAIGAON
ASSAM
PIN-783392

8: SULTANA MASUMA ROFIKA
D/O LATE MATAB ALI
R/O BARPETA ROAD TOWN
ALAMIN NAGAR
P.O. AND P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-781315

9: SULTANA YESMINA PARBIN
D/O LATE MATAB ALI
R/O BARPETA ROAD TOWN
ALAMIN NAGAR
P.O. AND P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-78131

VERSUS

MD. ABDUL SAMAD AKAND AND 20 ORS
S/O LATE ABDUL KARIM AKAND, R/O VILL- KHAIRABARI (BARPETA



ROAD), MOUZA- GOBARDHANA, P.S.-BARPETA ROAD, DIST- BARPETA,
ASSAM, PIN-781315

2:MD. AZAD ALI AKAND
S/O LATE ABDUL KARIM AKAND
R/O VILL- KHAIRABARI (BARPETA ROAD)
MOUZA- GOBARDHANA
P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-781315

3:MD. NOWSHED ALI AKAND
S/O LATE ABDUL KARIM AKAND
R/O VILL- KHAIRABARI (BARPETA ROAD)
MOUZA- GOBARDHANA
P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-781315

4:MD. PANCHAB ALI AKAND
S/O LATE ABDUL KARIM AKAND
R/O VILL- KHAIRABARI (BARPETA ROAD)
MOUZA- GOBARDHANA
P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-781315

5:JOHILA KHATUN
W/O LATE ABDUL RASHID AKAND
R/O VILL- KHAIRABARI (BARPETA ROAD)
MOUZA- GOBARDHANA
P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-781315

6:JOLI KHATUN
S/O LATE ABDUL RASHID AKAND
R/O VILL- KHAIRABARI (BARPETA ROAD)
MOUZA- GOBARDHANA
P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-781315



7:JOHORUDDIN AKAND
S/O LATE ABDUL RASHID AKAND
R/O VILL- KHAIRABARI (BARPETA ROAD)
MOUZA- GOBARDHANA
P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-781315

8:BULBUL AKAND
S/O LATE ABDUL RASHID AKAND
R/O VILL- KHAIRABARI (BARPETA ROAD)
MOUZA- GOBARDHANA
P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-781315

9:RAHUL AKAND
S/O LATE ABDUL RASHID AKAND
R/O VILL- KHAIRABARI (BARPETA ROAD)
MOUZA- GOBARDHANA
P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-781315

10:MOLLIKA KHATUN
D/O LATE ABDUL RASHID AKAND
R/O VILL- KHAIRABARI (BARPETA ROAD)
MOUZA- GOBARDHANA
P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-781315

11:AMBHIYA KHATUN
D/O LATE ABDUL RASHID AKAND
R/O VILL- KHAIRABARI (BARPETA ROAD)
MOUZA- GOBARDHANA
P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-781315

12:GITA PARAMANIK
W/O LATE SUBRANGSHU SHEKHAR PARAMANIK (JANTU)
R/O MATHABANGHA



WARD NO. 2
P.O.-MATHABANGHA
DIST-COOCH BEHAR
PIN-736146 STATE-WEST BENGAL

13:PARAMITA PARAMANIK
D/O LATE SUBRANGSHU SHEKHAR PARAMANIK (JANTU)
R/O MATHABANGHA
WARD NO. 2
P.O.-MATHABANGHA
DIST-COOCH BEHAR
PIN-736146 STATE-WEST BENGAL

14:NABANITA PARAMANIK
D/O LATE SUBRANGSHU SHEKHAR PARAMANIK (JANTU)
R/O MATHABANGHA
WARD NO. 2
P.O.-MATHABANGHA
DIST-COOCH BEHAR
PIN-736146 STATE-WEST BENGAL

15:HITANGSHU SHEKAHR PARAMANIK (MANTU)
S/O LATE SUDHANGSHU MOHAN PARAMANIK
R/O BABUPARA
BARPETA ROAD TOWN
P.O.-BARPETA ROAD
DIST-BARPETA
ASSAM
PIN-781315

16:SNEHANGSHU PARAMANIK (PINTU)
S/O LATE SUDHANGSHU MOHAN PARAMANIK
R/O BABUPARA
BARPETA ROAD TOWN
P.O.-BARPETA ROAD
DIST-BARPETA
ASSAM
PIN-781315

17:LILI PARAMANIK
D/O LATE SUDHANGSHU MOHAN PARAMANIK
R/O BABUPARA
BARPETA ROAD TOWN
P.O.-BARPETA ROAD
DIST-BARPETA
ASSAM
PIN-781315



18:JOLLI PARAMANIK
D/O LATE SUDHANGSHU MOHAN PARAMANIK
R/O BABUPARA
BARPETA ROAD TOWN
P.O.-BARPETA ROAD
DIST-BARPETA
ASSAM
PIN-781315

19:FULU PARAMANIK
D/O LATE SUDHANGSHU MOHAN PARAMANIK
R/O BABUPARA
BARPETA ROAD TOWN
P.O.-BARPETA ROAD
DIST-BARPETA
ASSAM
PIN-781315

20:BULAN PARAMANIK
S/O LATE SUDHANGSHU MOHAN PARAMANIK
R/O BABUPARA
BARPETA ROAD TOWN
P.O.-BARPETA ROAD
DIST-BARPETA
ASSAM
PIN-781315

21:RAJDEEP ROY
S/O LATE ARCHANA PARAMANIK
C/O LATE RAJENDRA ROY
R/O VILL-BEHELA
P.O.-BEHELA
PIN-700034
DIST-SOUTH 24TH PARGHANA
WEST BENGAL

For the Petitioner(s) : Mr. N. N. Jha, Advocate

For the Respondent(s) : Mr. A. R. Sikdar, Advocate

Date of Hearing : **11.03.2024**

Date of Judgment : **11.03.2024**



**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

1. The instant application under Section 115 of the Code of Civil Procedure, 1908 (for short "the Code") is converted to a proceedings under Section 96 read with Order XLI Rule 1 of the Code.
2. The Court Fee pursuant to the order dated 04.03.2024 have been duly deposited which is clearly seen from the Office Order.
3. The instant appeal arises out of an order dated 29.03.2023 passed by the learned Court of the Civil Judge, Barpeta in Title Suit No.04/2021 whereby the plaint of the suit was rejected on the ground of res-judicata i.e. being barred under Section 11 of the Code.
4. From a perusal of the plaint in Title Suit No.04/2021, it has been alleged that in view of a default in payment of the land revenue, Government auctioned a plot of land measuring 6 Bighas which was covered by Dag No.250 of K.P. Patta No.35 (Old) and 155 (New) of village Khoirabari under Mouza Gobardhana Circle Barnagar in the District of Barpeta. The said land was purchased by one Sudhangshu Mohan Paramanik (since deceased). Thereupon, the plaintiffs vide three registered Deed of Sale bearing Deed No.753/2007, 754/2007 and 755/2007 all dated 22.08.2007 purchased the said land of 6 Bighas which have been specifically described in Schedule-A to the plaint. It has been further alleged that the principal defendants in the said suit started claiming their right over the suit land and tried to dispossess the plaintiffs. As their attempts failed, a suit was filed by the principal defendants before the Court of the Munsiff No.1, Barpeta which was registered and numbered as Title



Suit No.54/2008 seeking declaration of their right, title and interest over the suit land described in Schedule-A to the plaint as well as for permanent injunction. It has been further alleged that the said suit being Title Suit No.54/2008 was dismissed by a judgment and decree dated 23.11.2010 by the Court of the Munsiff No.1, Barpeta. Being aggrieved, the principal defendants thereupon preferred an appeal being Title Appeal No.11/2011 before the Court of the learned Civil Judge, Barpeta. The said Title Appeal No.11/2011 was dismissed by the First Appellate Court vide judgment and decree dated 19.08.2011. Thereupon, the principal defendants approached this Court by filing a Regular Second Appeal being RSA No.194/2011 which is however pending disposal before this Court.

5. It has been further stated in the plaint that during the national lockdown on account of COVID restrictions, the principal defendants forcefully entered into the suit land and dispossessed the plaintiffs. The plaintiffs immediately could not approach the Court in view of the national lockdown and thereupon filed the present suit seeking declaration of right, title and interest over the suit land described in Schedule-A to the plaint; recovery of khas possession; permanent injunction etc.

6. The record reveals that the defendants have filed their written statement in the said suit. An application was filed under Order VII Rule 11(d) of the Code by the defendants seeking rejection of the plaint on the ground that the Regular Second Appeal is presently pending before this Court. The learned Trial Court vide the impugned order dated 29.03.2023 had rejected the plaint as being barred by principles of res-judicata.

7. This Court has duly heard Mr. N. N. Jha, the learned counsel appearing on behalf of the Appellants and Mr. A. R. Sikdar, the learned counsel appearing on

behalf of all the Respondents except Respondent No.2. The submissions of the learned counsels have also been duly taken note of.

8. It is well settled that the power conferred on the Court to terminate a civil action is a drastic one and the conditions enumerated under Order VII Rule 11 of the Code are required to be directly adhered to. At the same time, it is also relevant to take note of that under Order VII Rule 11 of the Code, a duty was also cast upon the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments made in the plaint read in conjunction with the documents relied upon or whether from the statements of the plaint, the suit is barred by any law.

9. The Supreme Court on various occasions had held that the underlying object of Order VII Rule 11 of the Code is that when a plaint does not disclose a cause of action or when a reading of a plaint, it appears that the suit is barred by law, the Court should not permit the plaintiff to unnecessarily protract the proceedings. It was observed that in such a case, it would be necessary to put an end to the sham litigation so that further judicial time is not wasted.

10. In the instant case, from a perusal of the plaint, it reveals that the plaintiffs sought for right, title and interest over the Schedule-A land as well as for recovery of possession on the basis of a purchase made vide various deed of sale dated 22.08.2007 from the successor in interest of Late Sudhangshu Mohan Paramanik who purchased the said suit land from the Government through auction sale. It is also seen from the plaint that the plaintiff claimed to be in possession of the suit land pursuant to their purchase and was dispossessed sometime in the month of April, 2020 for which the plaintiffs sought for recovery of khas possession and permanent injunction.

11. It is also apparent from a reading of the plaint that the suit which was filed by the principal defendants/the respondents herein i.e. Title Suit No.54/2008 is a suit claiming declaration of their right, title and interest in respect to suit land as described in Schedule-A to the plaint in Title Suit No.04/2021 and permanent injunction. The statements made in the plaint as it stands reveals that the said suit being Title Suit No.54/2008 was dismissed vide a judgment and decree dated 23.11.2010 by the learned Court of Munsiff No.1, Barpeta. The appeal filed there against being Title Appeal No.11/2011 was also dismissed vide judgment and decree dated 19.08.2011. A Regular Second Appeal was filed before this Court being RSA No.194/2011 and the same is presently pending. As of now, there is no judgment or decree in favour of the Respondents herein and under such circumstances it is beyond the comprehension of this Court as to how the principles of res-judicata could at all be applicable. This Court is shocked and surprised with the impugned order inasmuch as the learned Trial Court had applied the principles of res-judicata that too at the stage of rejection of the plaint.

12. Apart from that, this Court further finds it very relevant to take note of the judgment of the Supreme Court in the case **of Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and Others** reported in **(2021) 9 SCC 99** wherein the Supreme Court in great detail dealt with as to whether the plaint could be rejected under Order VII Rule 11 on the basis of being barred by law by applying the principles of res-judicata. In paragraph No.25 of the said judgment, the Supreme Court observed the guiding principles for deciding an application under Order VII Rule 11(d) of the Code. Taking into account its relevance, Paragraph No.25 and its sub-paragraphs are reproduced herein below:

“25. On a perusal of the above authorities, the guiding principles for deciding

an application under Order 7 Rule 11(d) can be summarised as follows:

25.1. *To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.*

25.2. *The defence made by the defendant in the suit must not be considered while deciding the merits of the application.*

25.3. *To determine whether a suit is barred by res judicata, it is necessary that (i) the "previous suit" is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.*

25.4. *Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the "previous suit", such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused."*

13. From the above quoted paragraphs, it would be seen that the Supreme Court categorically opined that to determine whether a suit is barred by res-judicata, it would be necessary that (i) the "previous suit" is decided; (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit is between the same party or parties through whom they claim, litigating under the same title and (iv) those issues adjudicated and finally decided by the Court competent to try the subsequent suit.

14. It was also observed that res-judicata requires consideration of pleadings, issues and decision in the "previous suit" and as such, a plea of res-judicata would be beyond the scope of Order VII Rule 11(d) of the Code where only the



statements in the plaint will have to be perused.

15. Taking into account the above decision, this Court is of the unhesitant opinion that the learned Trial Court had erred in law in rejecting the plaint vide the impugned order dated 29.03.2023. Accordingly, the said order dated 29.03.2023 is set aside and quashed.

16. The consequential affect of setting aside the impugned order dated 29.03.2023 is that Title Suit No.4/2021 is restored back to the file and this Court directs the learned Trial Court to proceed with the adjudication of the suit being Title suit No.4/2021 in accordance with law.

17. This Court further observes that the observations made herein relates to a decision on the rejection of the plaint and under such circumstances, the observations made herein shall influence the learned Trial Court in deciding the said suit.

18. As the parties are duly represented, the parties are directed to appear before the learned Trial Court on 03.04.2024 so that the learned Trial Court is in a position to further proceed with the suit.

19. The Registry is further directed to re-number the instant case as a Regular First Appeal and thereupon shall provide the certified copy of the instant judgment.

20. With above observations and directions, the instant appeal stands disposed of.

JUDGE

Comparing Assistant