



GAHC010172882023

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

Case No. : CRP(IO)/259/2023

MD. ARMAN HUSSAIN AND 2 ORS
SON OF LATE JAINAL ABEDIN,
RESIDENT OF KALIBARI PATHAR,
P.O., P.S. AND DISTRICT- DIBRUGARH,
ASSAM.

2: MD. FARUQUE HUSSAIN
SON OF LATE JAINAL ABEDIN

RESIDENT OF KALIBARI PATHAR

P.O.
P.S. AND DISTRICT- DIBRUGARH

ASSAM.

3: MD. ZAKIR HUSSAIN
SON OF LATE JAINAL ABEDIN

RESIDENT OF KALIBARI PATHAR

P.O.
P.S. AND DISTRICT- DIBRUGARH

ASSAM

VERSUS

ANOWARA SULTANA @ REHENA AND 7 ORS
DAUGHTER OF LATE GULAM SARBOR,
W/O- MOINUDDIN AHMED,
PALTAN BAZAR, DIBRUGARH,
P.O.- JALANNAGAR, P.S. AND DISTRICT- DIBRUGARH,
ASSAM, PIN- 786005.



2:MD. SAHENSHA @ AKTARUDDIN
SON OF LATE GULAM SARBOR
DIBRUJAN
P.O.- JALANNAGAR

P.S. AND DISTRICT- DIBRUGARH

ASSAM
PIN- 786005.

3:THE GOVT. OF ASSAM
REPRESENTED BY DEPUTY COMMISSIONER
DIBRUGARH

ASSAM.

4:THE DEPUTY COMMISSIONER
DIBRUGARH
DISTRICT DIBRUGARH.

5:ASHIYA BEGUM
DAUGHTER OF LATE JAINAL ABEDIN

RESIDENT OF KALIBARI PATHAR

P.O.
P.S. AND DISTRICT- DIBRUGARH

ASSAM
PIN- 786005.

6:JAHANARA BEGUM @ KHURSHIDA
DAUGHTER OF LATE JAINAL ABEDIN

RESIDENT OF KALIBARI PATHAR

P.O.
P.S. AND DISTRICT- DIBRUGARH

ASSAM
PIN- 786005.

7:NASIM BANU
DAUGHTER OF LATE JAINAL ABEDIN

RESIDENT OF KALIBARI PATHAR



P.O.
P.S. AND DISTRICT- DIBRUGARH

ASSAM
PIN- 786005.

8:AMINA KHATOON
WIFE OF LATE JAINAL ABEDIN

RESIDENT OF KALIBARI PATHAR

P.O.
P.S. AND DISTRICT- DIBRUGARH

ASSAM
PIN- 786005

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri GN Sahewalla, Sr. Adv.
Ms. S. Todi

Advocate for respondents : Shri DD Barman, GA, Assam

Date of hearing : 14.08.2023

Date of judgment : 14.08.2023

JUDGMENT & ORDER



Heard Shri GN Sahewalla, learned Senior Counsel assisted by Ms. S. Todi, learned counsel for the petitioners. Also heard Ms. D. Das Barman, learned State Counsel for the respondent nos. 3 and 4.

2. The powers under Article 227 of the Constitution of India read with Section 151 of the CPC is being sought to be invoked in this petition where a challenge has been made to an order dated 15.02.2023 passed by the learned Additional District Judge, Dibrugarh whereby the Petition bearing No. 4716/2017 filed in Title Appeal No. 01/2018 has been rejected. The aforesaid petition was filed under Order VI Rule 17 read with Section 151 CPC.

3. The petitioners were the plaintiffs and the Suit was filed for eviction. The Suit which was registered as Title Suit No. 18/2008 was however dismissed by the learned Munsiff No. 1, Dibrugarh whereafter an appeal has been preferred being Title Appeal No. 01/2018 before the learned Additional District Judge, Dibrugarh. During the pendency of the appeal, the aforesaid Petition No. 4716/2017 was filed for allowing amendment of the plaint in exercise of powers under Order VI Rule 17 read with Section 151 of the CPC. The learned Court vide the order dated 15.02.2023 has however dismissed the said petition.

4. Shri Sahewalla, learned Senior Counsel has submitted that the amendment sought for was trivial in nature where the date of death of the father of the plaintiff was wrongly typed as 13.02.2003 which was actually 13.09.2003. He has further submitted that the documents which were filed in support of such fact of death contained the correct date of death as 13.09.2003 and therefore it was in the fitness of things that the amendment should have been allowed. The learned Senior Counsel has also referred to a decision reported in **(2004) 6 SCC 415 [Pankaja & Anr Vs. Yellappa (D) By Lrs. & Ors]** on the powers of the Court to grant amendment.

5. The provision in the CPC regarding amendment of pleadings is found in Order VI Rule 17, which is extracted hereinbelow-

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

6. The said provision gives the powers to the Court to allow a party to amend his pleadings at any stage, so as to determine the real questions in controversy between the parties. However, there is a proviso to the aforesaid Order VI Rule 17, as per which, no application for amendment is to be allowed after the trial has commenced, unless the Court comes to a conclusion that in spite of due diligence a party could not have been raised the matter before the commencement of trial.

7. In the instant case, it is not in dispute that not only the trial had begun, the Suit itself was finally adjudicated and dismissed, it is only at the appellate stage that the application was filed for amendment. The proviso makes it clear that amendment are not to be allowed after the trial has commenced and such amendment can be allowed only under exceptional circumstances where, in spite of due diligence the party could not have been raised the matter before the commencement of trial.

8. In the instant case, though it is submitted that the amendment sought for is trivial in nature, it transpires that a defence has been taken by the adverse party in the Suit with regard to the gift deed which is executed on 07.08.2003.

9. In the considered opinion of this Court, the amendment sought for would be hit by the proviso of Order VI Rule 17 of the CPC and no exceptional circumstance has been able to be made out and rather allowing the amendment at this stage would be



causing prejudice to the defendants on whose contest, an *inter parte* order has been passed by the learned Trial Court dismissing the Suit, which is the subject matter of the appeal.

10. In that view of the matter, the petition stands dismissed.

JUDGE

Comparing Assistant