

GAHC010145552018



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

Case No. : CRP(I/O) 235/2018

1:RANJIT MALLICK
S/O LATE BRAJENDRA MALLICK, R/O. FATASIL AMBARI, MOUZA-
BELTOLA, P.S. AMBARI, DIST. KAMRUP, ASSAM, PIN- 781025.

VERSUS

1:BINOD KUMAR GUPTA AND ANR.
S/O. LT. RAGHU NATH PRASAD, R/O. BOJRANG AND COMPANY, T.R.
PHUKAN ROAD, FANCY BAZAR, GUWAHATI-1, P.S. PANBAZAR, DIST.
KAMRUP, ASSAM, PIN 781001.

2:SMTI. RICHA GUPTA
WIFE OF BINOD KUMAR GUPTA
R/O. BOJRANG AND COMPANY
T.R. PHUKAN ROAD
FANCY BAZAR
GUWAHATI-1
P.S. PANBAZAR
DIST. KAMRUP
ASSAM
PIN 781001

Advocate for the Petitioner : MR. A C SARMA

Advocate for the Respondent : MR. S SHARMA (R1, R2)

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

30.11.2018

Heard Mr. A. C. Sarma, learned senior counsel appearing for the petitioner. I have also heard Mr. S. J. Sarma, learned counsel representing the respondents.

This Revision Petition has been preferred against the order dated 13.03.2018 passed in Misc.(J) Case No.570/2017 arising out of Title Suit No.93/2007 whereby the learned Civil Judge No.3(K)(M), Guwahati, has rejected the prayer made by the petitioner/plaintiff for amendment of the plaint.

A perusal of the application filed under Order VI Rule 17 CPC goes to show that the petitioner had sought insertion of two paragraphs in the plaint in the form of paragraphs 16 and 16(a) and also amendment of the schedule of the suit land by making insertion of new lines therein. According to Mr. Sarma, the need for amendment of the plaint arose on account of developments that took place during the pendency of the suit and therefore, the learned trial court was not justified in rejecting the prayer for want of due diligence.

Mr. S. J. Sarma, learned counsel for the respondents, on the other hand, contends that he would have no objection if the amendment sought in the form of insertion of paragraph 16 is allowed but in so far as the remaining amendments sought by the plaintiff is concerned, those are clearly belated and therefore, cannot be allowed in view of the proviso to Order VI Rule 17 CPC for want of due diligence. The learned counsel submits that the suit is presently at the stage of cross-examination of defendants' witnesses and there is no explanation as to when the construction of the alleged road in the eastern

side of the suit land had commenced and when the plaintiff came to know about the same. Under the circumstances, Mr. Sarma submits that the learned trial court has rightly rejected the prayer for amendment of the plaint made by the petitioner.

As noted above, the petitioner had sought amendment of the plaint seeking insertion of two paragraphs in the form of paragraphs 16 and 16(a) and also change in the schedule of the plaint. By insertion of paragraph 16 the plaintiff had made a prayer to insert the following lines:-

“Be it stated that suddenly on 14-05-2017 when the plaintiff visited the suit land along with Sri Pranab Roy found that the defendant Nos.1 and 2 have already started a new permanent construction of a Pucca House covering the suit land and the land of Sri Pranab Roy which is likely to be completed within few days inspite of having the injunction order of this Hon'ble Court.”

A reading of the said averments clearly indicates that the event had occurred during the pendency of the suit. Learned counsel for the respondents has also fairly conceded that the said amendment would not be hit by want of due diligence. If that be so, the learned trial court, in my opinion, was not correct in rejecting the prayer for amendment by insertion of paragraph 16 of the plaint as noted above.

However, the prayer for amendment in the form of paragraph 16(a) appears to be based on totally vague statement with no indication as to why the said prayer could not have been made at the stage of filing the suit, more so when the plaintiff has prayed for eviction of the defendants from the suit

land. Since the amendment of the plaint by insertion of paragraph 16(a) is the basis on which the change in the schedule of the plaint is sought, unless the said prayer is allowed, the prayer for amendment of the schedule also cannot be permitted.

As noted above, I do not find anything on record to explain as to why the amendment in the form of insertion of paragraph 16(a) could not have been made by the plaintiff on an earlier date i.e. before the commencement of trial of the suit. In view of the above, such prayer has been rightly rejected by the learned trial court.

For the reasons stated herein above, the Revision Petition stands partly allowed.

Insertion of the statements as paragraph 16 is permitted but remaining portion of the prayer of the amendment of plaint stands rejected.

The parties to bear their own cost.

JUDGE

Comparing Assistant