

GAHC010062432026



2026:GAU-AS:4529

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

Case No. : CRP(IO)/103/2026

SMTI SUBHASHREE PAUL AND ANR
D/O LATE GAURANGA CHANDRA PAUL, W/O SRI TAPASH KARMAKAR,
R/O HOSPITAL ROAD, BORODA COLONY, SILCHAR TOWN, P.O. AND P.S.-
SILCHAR, DIST- CACHAR, ASSAM

2: SMTI. KAKALI PAUL
D/O LATE GAURANGA CHANDRA PAUL
W/O SRI SHIBABRATA PAUL
R/O 10B/2
NORTH ROAD JADAVPUR
P.O. AND P.S.- KOLKATA-32
WEST BENGAL

VERSUS

SANTANU PAUL
S/O LATE GAURANGA CHANDRA PAUL, R/O NAZIRAPATTY, SILCHAR
TOWN, P.O. AND P.S.- SILCHAR, DIST- CACHAR, ASSAM

Advocate for the Petitioner : MR. D MOZUMDER, MR. D MAZUMDAR, MS. S NATH

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 30.03.2026

Heard Mr. D. Mozumdar, learned Senior Counsel assisted by Mr. Dhiman Mazumdar, learned counsel for the petitioners.

2. In this petition, under Article 227 of the Constitution of India, the petitioners have challenged the order dated 16.12.2025, passed by the learned District Judge, Cachar, Silchar, in Test Suit No. 4/2011.

3. It is to be noted here that vide impugned order, dated 16.12.2025, the learned District Judge, Cachar, Silchar has rejected the petition No. 172/14, filed by the petitioners herein seeking time to adduce further evidence in the suit, and also, he has refused to accept the examination-in-chief of D.W.2 and D.W.3, submitted in the Court on that day, in view of rejection of petition No. 172/14.

4. Mr. Mozumdar, learned Senior Counsel for the petitioners submits that petitioners herein are the defendants in a testamentary suit, being Test Suit No. 4/2011, and in the said suit, they had adduced their evidence. Mr. Mozumdar also submits that the petitioner No. 1 was cross-examined and she had filed one petition being petition No. 172/14, on 16.12.2025, for allowing her to adduce further evidence. Mr. Mozumdar further submits that the respondent herein had filed written objection and questioned about the maintainability of the said petition at that stage, and thereafter, the learned District Judge, Cachar, Silchar by considering Order 16 sub-rule 3 to Rule 1 CPC, had dismissed the same on the ground that the petition filed by the petitioners is silent as to why a list of witnesses was not furnished earlier and no sufficient reason had been shown in

the petition by the defendants' side and it further held that mere wish/intent cannot be a sufficient cause within the meaning of Order 16 sub-rule 3 to Rule 1 CPC.

4.1. Mr. Mozumdar further submits that in petition No. 172/14, the petitioners herein, as defendants, have not mentioned the relevant provision of law, yet in fact, the said petition was filed under Order 16 Rule 1A, not under Order 16 sub-rule 3 to Rule 1 CPC; and that though the requirement of Rule 1 and 3 of Order 16 CPC is that sufficient reason has to be shown for failing to file the list of witnesses, yet such requirement is not there in Order 16 Rule 1A CPC.

4.2. In support of his submission, Mr. Mozumdar has referred to a decision of Hon'ble Supreme Court in the case of **Mange Ram vs. Brij Mohan and Ors.**, reported in (1983) 4 SCC 36, especially paragraph Nos. 9 and 10, and submits that under Rule 1A, the party of necessity has to seek assistance of the Court and Rule 1A operates in a different area other than sub-rule (3) of Rule 1 and it caters to two different situations. Under such circumstances, he submits that the impugned order dated 16.12.2025, so passed by the learned District Judge, Cachar, Silchar, suffers from illegality and infirmity and the same requires interference of the court.

5. Having heard the submission of Mr. Mozumdar, learned counsel for the petitioner, this Court has carefully gone through the petition and documents placed on record, and also perused the impugned order, dated 16.12.2025, and also gone through the decision of Hon'ble Supreme Court in the case of **Mange Ram** (supra), and also gone through the relevant provisions of law i.e. Rule 1A of Order 16 CPC and also sub-rule 3 to Rule 1 of Order 16 CPC.

6. It is to be noted here that Order 16 Rule 1A provides as under:

“1A. Production of witnesses without summons.— Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.”

7. While dealing with the aforesaid provision, Hon’ble Supreme Court in the case of *Mange Ram* (supra), in paragraphs 9 and 10, held us under:

“9. If the requirements of these provisions are conjointly read and properly analysed, it clearly transpires that the obligation to supply the list as well as the gist of the evidence of each witness whose name is entered in the list has to be carried out in respect of those witnesses for procuring whose attendance the party needs the assistance of the court. When a summons is issued by the court for procuring the presence of a witness, it has certain consequences in law. If the summon is served and the person served fails to comply with the same, certain consequences in law ensue as provided in Rule 10 of Order 16. The consequence is that where the witness summoned either to give evidence or to produce documents fails to attend or to produce the documents in compliance with such summons, the court on being satisfied of the service as provided therein and is further satisfied that the person has without lawful excuse failed to honour the summons, the court may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed in the manner therein provided. Simultaneously, the court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property for such amount as it thinks fit. Even if thereafter the witness fails to appear, the court may impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and

may order his property, or any part, thereof, to be attached and sold as provided in Rule 12 of Order XVI. In view of this legal consequence ensuing from the issuance of a summons by the court and failure to comply with the same, the scheme of Rules 1, 1-A of Order 16 and Rule 22 of the Rules framed by the High Court clearly envisaged filing of a list only in respect of witnesses whom the parties desire to examine and procure presence with the assistance of the court. There, however, remains an area where if the party to a proceeding does not desire the assistance of the court for procuring the presence of a witness, obviously the party can produce such witness on the date of hearing and the court cannot decline to examine the witness unless the court proposes to act under the proviso to sub-section (1) of Section 87 of the '1951 Act' which enables the court for reasons to be recorded in writing, to refuse to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings. It, therefore, unquestionably transpires that the obligation to supply the list of witnesses within the time prescribed under sub-rule (1) of Rule 1 of Order 16 is in respect of witnesses to procure whose presence the assistance of the court is necessary. And this ought to be so because the court wants to be satisfied about the necessity and relevance of the evidence of such witness whose presence will be procured with the assistance of the court. This not only explains the necessity of setting out the names of witnesses in the list but also the gist of evidence of each witness. If mere omission to mention the name of a witness in the list envisaged by sub-rule (1) of Rule 1 of Order 16 would enable the court to decline to examine such witness, Rule 1-A of Order 16 would not have omitted to mention that only those

witnesses kept present could be examined whose names are mentioned in the list envisaged by sub-rule (1) and who can be produced without the assistance of the court. Viewed from this angle, Rule 1-A becomes wholly redundant. If it is obligatory upon the party to mention the names of all witnesses irrespective of the fact whether some or all of them are to be summoned and even the names of those whom the party desires to produce without the assistance of the court are also required to be mentioned in the list on the pain that they may not be permitted to be examined, Rule 1-A would have given a clear legislative exposition in that behalf and the marginal note of Rule 1-A clearly negatives this suggestion. Marginal note of Rule 1-A reads as 'Production of witnesses without summons' and the rule proceeds to enable a party to bring *any* witness to give evidence or to produce documents without applying for summons under Rule 1. If it was implicit in Rule 1-A that it only enables the party to examine only those witnesses whose names are mentioned in the list filed under sub-rule (1) of Rule 1 whom the party would produce before the court without the assistance of the court, it was not necessary to provide in Rule 1-A that the party may bring any witness to give evidence or to produce documents without applying for summons under Rule 1. Rule 1-A of Order 16 clearly brings to surface the two situations in which the two rules operate. Where the party wants the assistance of the court to procure presence of a witness on being summoned through the court, it is obligatory on the party to file the list with the gist of evidence of witness in the court as directed by sub-rule (1) of Rule 1 and make an application as provided by sub-rule (2) of Rule 1. But where the party would be in a position to produce its witnesses without the assistance of the court, it can do so under Rule 1-A of Order 16 irrespective of the fact whether the name of such witness is mentioned in the list or not.

10. It was, however, contended that Rule 1-A is subject to sub-rule (3) of Rule 1 and therefore, the court must ascertain how far sub-rule (3) would carve out an exception to the enabling provision contained in Rule 1-A. There is no inner contradiction between sub-rule (1) of Rule 1 and Rule 1-A of Order XVI. Sub-rule (3) of Rule 1 of Order 16 confers a wider jurisdiction on the court to cater to a situation where the party has failed to name the witness in the list and yet the party is unable to produce him or her on his own under Rule 1-A and in such a situation the party of necessity has to seek the assistance of the court under sub-rule (3) to procure the presence of the witness and the court may if it is satisfied that the party has sufficient cause for the omission to mention the name of such witness in the list filed under sub-rule (1) of Rule 1, still extend its assistance for procuring the presence of such a witness by issuing a summons through the court or otherwise which ordinarily the court would not extend for procuring the attendance of a witness whose name is not shown in the list. Therefore, sub-rule (3) of Rule 1 and Rule 1-A operate in two different areas and cater to two different situations.”

8. Thus, having examined the impugned order in the light of the facts and circumstances on the record, and also in the light of the proposition laid down by Hon’ble Supreme Court in the case of *Mange Ram* (supra), this Court is inclined to dispose of this petition by directing the petitioners herein to file a fresh application before the learned District Judge, Cachar, Silchar, under Order 16 Rule 1A CPC, and on such application being filed, the learned District Judge shall consider the same in accordance with law.

9. Accordingly, the impugned order dated 16.12.2025, stands interfered with, as the same was passed without considering the relevant rule and the proposition of law presently holding the field.

10. Mr. Mozumdar submits that the next date is fixed on 06.04.2026, by the learned District Judge for hearing/necessary order and before that day, the petitioners will file the application.

11. In terms of above, this revision petition stands disposed of at this motion stage itself.

JUDGE

Comparing Assistant