

GAHC010074062024



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

Case No. : CRP(IO)/153/2024

DASARATH PRASAD
S/O LATE RAGHUBIR PRASAD, R/O WARD NO. 9, LAKHIMPUR, P.O. AND
P.S.-NORTH LAKHIMPUR, ASSAM

VERSUS

NAZRUL HUSSAIN AND 3 ORS
S/O LATE AMANULLAH HUSSAIN, R/O WARD NO. 11, K.B. ROAD, NORTH
LAKHIMPUR, P.O. AND P.S.-NORTH LAKHIMPUR, DIST- LAKHIMPUR,
ASSAM-787001

2:MURTAZA AHMED CHOUDHARY
HUSBAND OF ASFIYA BEGUM CHOUDHURY WHO WAS ELDER D/O LATE
SAYEDA RUBIA BEGUM
R/O WARD NO. 11
K.B. ROAD
NORTH LAKHIMPUR
P.O. AND P.S.-NORTH LAKHIMPUR
DIST- LAKHIMPUR
ASSAM-787001

3:NAFISA MASOOM
D/O MURTAZA AHMED CHOUHDARRY AND LATE ASFIYA BEGUM
CHOUDHARY
R/O WARD NO. 11
K.B. ROAD
NORTH LAKHIMPUR
P.O. AND P.S.-NORTH LAKHIMPUR
DIST- LAKHIMPUR
ASSAM-787001

4:MUST. NAZIFA SULTANA HUSSAIN
D/O LATE AMANULLAH HUSSAIN
R/O WARD NO. 11

K.B. ROAD
NORTH LAKHIMPUR
P.O. AND P.S.-NORTH LAKHIMPUR
DIST- LAKHIMPUR
ASSAM-78700

Advocate for the Petitioner : MR. S K SINGH, MR. A DHANUKA,MR. A GANGULY

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

For the petitioner : Mr. S. K. Singh, Sr. Advocate
: Mr. A. Ganguly, Advocate

For the respondent : no one has appeared.

Date of Hearing : **16.10.2025**

Date of Judgment : **17.02.2026**

JUDGMENT & ORDER

- 1.** Heard Mr. S. K. Singh, learned senior counsel assisted by Mr. A. Ganguly, learned counsel for the petitioner.
- 2.** None has appeared for the respondents in spite of due service of notice on them, hence, this matter was heard *ex-parte* against the respondents.
- 3.** This Civil Revision Petition (IO) has been preferred by the petitioner, namely, *Dasarath Prasad*, impugning the order dated 27.09.2023, passed in Misc.(J) Case No. 30/2022, arising out of Title Suit No. 19/2011, by the Court of learned Civil Judge (Junior Division) No. 1, North Lakhimpur by which the prayer

for impleadment of the new defendants, namely, Anowar Hussain and Monowar Hussain, and striking out of the names of original defendants in the aforesaid title suit was allowed.

4. The facts relevant for consideration of the instant civil revision petition, in brief, are that the predecessor in interest of the present respondents, namely, Sayeda Rubia Begum along with her daughter, namely, Nazifa Sultana Hussain had jointly filed the Title Suit No. 11/2010 against the present petitioner for the relief of his eviction from the suit premises mainly on the ground of defaulter in payment of rents and of *bona fide* requirement.

5. It is pertinent to mention herein that the suit premises measure about 10 ft. X 59 ft. The present petitioner contested the said suit by filing his written statement. During the pendency of the aforesaid suit, on 29.05.2011, major portion of the suit premises was gutted by fire and was burned down. Accordingly, the plaintiffs at that point of time, filed an application under Order 23 Rule 1 of the CPC, on 01.06.2011, praying for allowing them to withdraw the suit, as the suit premises itself got burnt down due to the fire. However, the aforesaid application was not pressed by them. They submitted similar application subsequently also. It is contended by the petitioner that though the major portion of the suit property was damaged due to fire, however, there was a toilet in the suit premises, which was used as a godown and was not damaged and the present petitioner continued to remain in possession of the same.

6. After the fire incident, the petitioner as plaintiff had filed another suit which was registered as Title Suit No. 19/2011 before the Court of learned Munsiff No. 1 against the said Sayeda Rubia Begum with a prayer for directing the defendant to repair/renovate the damaged suit premises.

7. It is contended by the petitioner that though the tenanted premises were shown in the tenancy agreement as covering an area of 10 ft. X 59 ft., however, actually it was 10 ft. X 90 ft. In this regard, the petitioner approached the Trial Court for measurement of the entire tenanted premises by filing a petition. However, the Trial Court rejected the prayer of the petitioner for measurement of the suit premises. Against the rejection order, the petitioner preferred a Civil Revision Petition (IO), which was registered as CRP(IO) No. 292/2010 and the High Court, by its order dated 18.09.2019 directed the measurement of the suit premises.

8. It is also contended that the defendant No. 1, late Sayeda Rubia Begum had appointed her son, namely, Nazrul Hussain as her attorney holder, who used to take all steps in the suit filed by the present petitioners.

9. The respondent No. 1, who was also the attorney holder of the original plaintiff filed a petition before the Trial Court, *inter alia*, stating that the suit property has been sold on 26.04.2016 to two brothers, namely, Anowar Hussain and Monowar Hussain by a registered sale deed bearing No. 107/2016. It was contended that the said sale deed was executed, by one Muhiuddin Laskar, as the attorney of Sayeda Rubia Begum. The respondent No. 1 in an application under Order 1 Rule 10(2) of the Code of Civil Procedure prayed for adding the purchaser of the suit premises, namely, Anowar Hussain and Monowar Hussain and also prayed for striking out the names of the defendants (all the legal heirs of late Sayeda Rubia Begum). The said petition was registered as Misc.(J) Case No. 30/2022. Though, the present petitioner objected to the impleadment as of new defendants in this suit without any application to that effect by him and striking out of the legal heirs of the original defendant, however, by the impugned order dated 27.09.2023, the Trial Court allowed the petition filed by

the respondent No. 1 and impleaded Anowar Hussain and Monowar Hussain as defendants in the aforesaid title suit and also strike out the names of the respondents from the plaint by invoking the powers under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908.

10. The learned senior counsel for the petitioner has submitted that the Trial Court had erred in allowing the petition filed by the present respondent No. 1 for impleading two strangers as defendants merely on the basis of the submissions made by the respondent No. 1 to the effect that the newly impleaded defendants have purchased the suit property. He submits that the sale deed in question on the basis of which the suit property is claimed to be sold to Anowar Hussain and Monowar Hussain was executed during the pendency of *status quo* order passed in Misc.(J) Case No. 15/2011 in connection with Title Suit No. 19/2011. He submits that since the sale deed relied upon by the respondent No. 1 appears to have been executed during the pendency of the aforesaid *status quo* order, same ought not to have been relied upon by the Trial Court to implead the new purchaser as defendant in the Title Suit No. 11/2010. He submits that alienation of the suit premises during the subsistence of a *status quo* order without any leave for transferring the suit property from the Trial Court ought not to be regarded as a basis for allowing the impleadment petition. In support of his submission, learned senior counsel for the petitioner has cited a ruling in the case of "**Surjit Singh and others etc. Vs. Harbans Singh and others etc.**" reported in "**AIR 1996 SC 135**".

11. The learned senior counsel for the petitioner has further submitted that the so-called purchaser of the suit property never approached the Trial Court for impleading themselves as defendants, neither any such application was filed by the present petitioner.

12. The learned senior counsel for petitioner submits that the present petitioner being the plaintiff in Title Suit No. 19/2011 was *dominus* litis in the suit and it was for him to choose as to against whom, he decides to proceed. It was not for the other defendants to dictate the terms as to against whom he should pursue his case.

13. He also submits that the original defendant, namely, Sayeda Rubia Begum, who was pursuing the suit, never disclosed the fact of alienation of the suit property, by executing the sale deed dated 26.04.2016, till her death on 1st of May, 2021. He also submits that the Trial Court also erred in not considering the fact that the respondent No. 1, Nazrul Hussain, who was the attorney holder of the original defendant and was taking all the steps in the said suit from the period 2016 to 2022 took the plea that the suit property has been sold in the year 2016 itself, that too during the pendency of the *status quo* order, same ought not to have been taken into consideration by the Trial Court.

14. I have considered the submissions made by the learned senior counsel for the petitioner and have gone through the rulings cited by him in support of his contentions.

15. On perusal of the impugned order, it appears that the Trial Court, by passing the impugned order, not only allowed the impleadment of two new defendants but also allowed the striking out of names of the existing defendants (present respondents).

16. Apparently, on perusal of the application filed by the respondent No. 1 under Order 1 Rule 10(2) before the Trial Court, it appears that the aforesaid respondent only took plea of the alienation of the suit property by his predecessor in interest and prayed for striking out of the names of original

defendants by including the names of new purchasers. No application for impleadment in the suit was filed by the new purchasers, i.e., Anowar Hussain and Monowar Hussain.

17. Without going into the question of validity or otherwise of the sale deed executed during the existence of an order to maintain *status quo* in respect of the suit property, even if it is assumed that the said sale deed had conveyed the title to the new purchasers, this Court is of considered view that the impleadment of such purchasers as defendants may be made only if either such purchaser seek to be impleaded in the suit by filing an appropriate application or the present appellant, as plaintiff, makes such a prayer. The prayer for impleadment of new parties may not be made at the instance of original defendants who have themselves sought striking out of their names.

18. The power of the Trial Court under Order 10 Rule 10(2) of the Code of Civil Procedure, 1908 is a wide and extensive power to implead any party or to strike out any party at any stage of proceeding. However, the said power is to be exercised judiciously, only if such an impleadment or striking out, in the considered opinion of the Court, may be regarded necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

19. In the instant case, since the existing defendants were no longer interested to pursue the suit as they do not have any title over the suit premises, they could not have prayed for impleading the new purchasers as defendants in the suit without the consent of present petitioner. No reason for impleading the new purchasers as defendants was mentioned in the application under Order 1 Rule 10(2) of CPC, apart from mentioning that they were the new purchasers. Mere fact of purchasing a property, during the pendency of a

litigation, is, in itself, not sufficient to implead such purchasers, unless there is a willingness on the part of the plaintiff, being *dominus litis* to seek any remedy against the new purchasers. It is for the plaintiff to decide whether to pursue the pending litigation against the new purchaser or not. The Trial Court appears to have not taken this aspect into consideration. A plaintiff being a *dominus litis* may choose as to against whom he may pursue his case, however, in a circumstance when he himself is not interested to pursue the litigation (as in the instant case), against a particular person, he cannot be compelled to make new purchasers of the suit land, as defendants. As such, this Court is of considered opinion that the impugned order has been passed by the Trial Court without taking into consideration the willingness of the present petitioner to pursue his suit against new seller. If for such non-impleadment, the merit of his suit is affected, it is for the present petitioner to face the consequences, however, he may not be compelled to abandon his claim against the original defendant and pursue the same against new purchaser even when he is not willing to do so. Hence, the impugned order is liable to be set aside.

20. In view of the discussions made and reasons stated in the foregoing paragraphs, the impugned order passed by the Trial Court is hereby set aside.

21. This civil revision petition is accordingly disposed of.

22. Send back the records which were requisitioned from the Trial Court to the Trial Court along with a copy of this judgment.

JUDGE

Comparing Assistant